UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

GEORGE ZIMBELMAN, Plaintiff, v. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant.	No. CV-05-0324-AAM ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT are Plaintiff's Motion for Summary Judgment (Ct. Rec. 7) and Defendant's Motion for Summary Judgment (Ct. Rec. 8), noted for hearing without oral argument on May 29, 2006 (Ct. Rec. 6). Plaintiff George N. Zimbelman ("Plaintiff") filed a reply brief on May 15, 2006. (Ct. Rec. 10). Attorney Tom G. Cordell represents Plaintiff; Special Assistant United States Attorney David R. Johnson represents the Commissioner of Social Security ("Commissioner"). The Court has taken these matters under submission without oral argument. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 8) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 7).

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JURISDICTION

On October 24, 2000, Plaintiff protectively filed applications for Disability Insurance Benefits (“DIB” and Supplemental Security Income (“SSI”) payments. (Administrative Record ("AR") 19, 85-87, 776-777). He alleges he has been unable to work since May 1, 1998 (AR 85, 776), due to lower back, right hip, and left knee impairments (AR 102). After his applications were denied initially and on reconsideration, Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). Hearings were held before ALJ Mary Reed on April 18, 2002 (AR 789-817)and June 27, 2002 (AR 818-861), at which Plaintiff appeared with counsel and testified on his own behalf. Also offering testimony at the hearings were medical expert, Glen Almquist, M.D., and Debra Lapoint, a vocational expert. On September 23, 2004, the ALJ determined Plaintiff was not disabled because he can perform a significant range of light work. (AR 19-37). When the appeals council denied review on September 14, 2005 (AR 10-13), the ALJ's decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g).

Plaintiff filed this action seeking judicial review of the Commissioner's denial of his applications for Disability Insurance Benefits and Supplemental Security Income payment pursuant to 42 U.S.C. § 405(g) on October 19, 2005. (Ct. Rec. 1).

STATEMENT OF FACTS

The facts have been presented in the administrative hearing transcript, the ALJ's decision, the briefs of both Plaintiff and the Commissioner and will only be summarized here.

Plaintiff was 53 years old on the date of the ALJ's decision.

(AR 19). He has a high school education. (AR 19). He last worked on May 1, 1998 as a driller helper, considered semi-skilled heavy to very heavy work. (AR 854-855). While working as a well driller helper he suffered an injury to his left knee in 1977 and his mid and lower back in 1998. In 2000, he injured his back while haying. (AR 826).

SEQUENTIAL EVALUATION PROCESS

The Social Security Act (the "Act") defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a Plaintiff shall be determined to be under a disability only if any impairments are of such severity that a Plaintiff is not only unable to do previous work but cannot, considering Plaintiff's age, education and work experiences, engage in any other substantial gainful work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person is engaged in substantial gainful activities. If so, benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not, the decision maker proceeds to step two, which determines

whether Plaintiff has a medically severe impairment or combination of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

If Plaintiff does not have a severe impairment or combination of impairments, the disability claim is denied. If the impairment is severe, the evaluation proceeds to the third step, which compares Plaintiff's impairment with a number of listed impairments acknowledged by the Commissioner to be so severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed impairments, Plaintiff is conclusively presumed to be disabled. If the impairment is not one conclusively presumed to be disabling, the evaluation proceeds to the fourth step, which determines whether the impairment prevents Plaintiff from performing work which was performed in the past. If a Plaintiff is able to perform previous work, that Plaintiff is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, Plaintiff's residual functional capacity ("RFC") assessment is considered. If Plaintiff cannot perform this work, the fifth and final step in the process determines whether Plaintiff is able to perform other work in the national economy in view of Plaintiff's residual functional capacity, age, education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

The initial burden of proof rests upon Plaintiff to establish a *prima facie* case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*

Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is met once Plaintiff establishes that a physical or mental impairment prevents the performance of previous work. The burden then shifts, at step five, to the Commissioner to show that (1) Plaintiff can perform other substantial gainful activity and (2) a "significant number of jobs exist in the national economy" which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

STANDARD OF REVIEW

Congress has provided a limited scope of judicial review of a Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold the Commissioner's decision, made through an ALJ, when the determination is not based on legal error and is supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). "The [Commissioner's] determination that a plaintiff is not disabled will be upheld if the findings of fact are supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (*citing* 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989); *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d 573, 576 (9th Cir. 1988). Substantial evidence "means such evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch inferences and conclusions as the [Commissioner] may reasonably draw from the evidence" will also be

upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers the record as a whole, not just the evidence supporting the decision of the Commissioner. *Weetman v. Sullivan,* 877 F.2d 20, 22 (9th Cir. 1989) (*quoting Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

It is the role of the trier of fact, not this Court, to resolve conflicts in evidence. *Richardson,* 402 U.S. at 400. If evidence supports more than one rational interpretation, the Court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

ALJ'S FINDINGS

The ALJ found at step one that Plaintiff has not engaged in substantial gainful activity since his alleged date of disability. (AR 20). At step two, the ALJ found that the medical evidence established the Plaintiff suffered from severe alcoholism, degenerative disc disease, left knee arthritis and mild chronic obstructive pulmonary disease ("COPD"). (AR 31). Though Plaintiff has impairments considered severe, the ALJ concluded

that he does not have an impairment or combination of impairments listed in or medically equal to one of the Listings impairments. (AR 39, 42).

After finding the Plaintiff's testimony regarding his pain, symptoms, and limitations not credible (AR 32-33) the ALJ concluded that prior to May 2001, Plaintiff had the RFC to perform a somewhat restricted range of light unskilled work. Specifically, the ALJ concluded Plaintiff could not perform work that would require more than ocassionally lifting/carrying 20 pounds; frequently lifting/carrying 10 pounds; standing two hours at a time; occasionally pushing/pulling with his left leg more than 20 pounds; and occasionally causing him to kneel, squat or crawl. After Plaintiff's knee impairment became sympomatic in May 2001, Plaintiff's RFC was more limited in that he was only able to walk for 30 minutes at a time for a total walking of 2 hours out of an 8 hour day. The ALJ found that with these restrictions he would not be able to perform his past relevant work. (AR 34). In response to the ALJ's hypothetical questions, the vocational expert testified that a person having the hypothesized restrictions could perform such jobs as a parking lot attendant, outside sales deliverer, production assembler, and until May 2001, a mail clerk. (AR 35). Based on testimony from the vocational expert, the ALJ determined that Plaintiff retains the capacity for work that exists in significant numbers in the national economy. The ALJ, therefore, found that Plaintiff was not disabled within the meaning of the Social Security Act. (AR 41-42).

ISSUES

Plaintiff contends that the Commissioner erred as a matter of

law. Specifically, he argues that (1) the ALJ erred by concluding his lung impairment was not severe at step two of the sequential evaluation process; (2) the ALJ erred in finding the Plaintiff not credible; (3) the ALJ erred in failing to consider the state Department of Labor and Industries finding; and (4) the ALJ's residual functional capacity determination was not properly supported. Plaintiff challenges the determination that he can perform a "narrow range" of light duty work and instead suggests the evidence shows he is limited to sedentary activities and as such, is disabled.

The Commissioner opposes the Plaintiff's motion and requests the ALJ's decision be affirmed. Ct. Rec. 9.

DISCUSSION

A. Step Two: Pulmonary Impairment

Plaintiff has complained in the past of being short of breath (AR 753) and claims his shortness of breath limits his ability to work. Ct. Rec. 7, Ex. 2 at 2. He does not deny smoking at least pack of cigarettes a day. (AR 753, 831). On January 23, 2001, pulmonary function testing showed a "moderate obstructive lung defect with an insignificant response to bronchodialator." (AR 440). On November 17, 2002, Plaintiff underwent a right thoracotomy, decortication, and right middle and lower lobectomies, resulting in the removal of a substantial portion of his right lung. (AR 634-636). He was discharged from the hospital on December 18, 2002.

While the ALJ found Plaintiff's mild chronic obstructive pulmonary disease qualified as a "severe" impairment under the social security regulations, the ALJ declined to find his alleged

breathing difficulty as a result of the lung surgery severe. Plaintiff complains the ALJ erred in discounting his breathing problems as not severe because the consulting physician, Dr. Whitehouse, upon whose report the ALJ relied in reaching this conclusion, failed to recognize Plaintiff had undergone lobectomies of his right lung and discounted Plaintiff's effort on examination.

At the request of the ALJ, on December 18, 2003, Plaintiff was examined by Dr. Alan C. Whitehouse, M.D. for an evaluation of "his claim of emphysema" and for pulmonary function studies. According to Dr. Whitehouse, the best of each spirometry study was taken, despite what he believed to be "poor effort on the part of the patient." (AR 754). Dr. Whitehouse concluded that at best, the test results showed a "mild degree of airway obstruction," although he questioned whether there was any obstruction. (AR 754). Dr. Whitehouse opined that his examination revealed "equal breath sounds" with "no appreciable airway obstruction" and no evidence of any significant degree of emphysema or other respiratory impairment. (AR 753-754).

Even assuming *arguendo* that the ALJ did error at Step 2 in so finding, any such error was harmless because the record does not support greater limitations than those found by the ALJ. Despite Dr. Whitehouse's imprecise characterization of Plaintiff's lung procedure, the pulmonary function tests conducted by Dr. Whitehouse revealed very little change or even slight improvement

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from Plaintiff's pre-operation testing.[1] In addition, the ALJ concluded that Plaintiff had chronic obstructive pulmonary disease which qualified as a severe impairment. Thus, ultimately, at Steps 4 and 5, despite Dr. Whitehouse's suggestion that Plaintiff had no work related pulmonary limitation, the ALJ accommodated Plaintiff's pulmonary impairment by finding the Plaintiff restricted to a narrow range of light work which could not involve prolonged walking.

Plaintiff also claims the ALJ failed to fully develop the record in terms of Plaintiff's pulmonary restriction because the use of pulmonary function test as a measure is a poor indicator of pulmonary function and because Dr. Whitehouse failed to accurately characterize the full extent of Plaintiff's previous lung operation. Ct. Rec. 7 at 3. "[T]he ALJ in a social security case has an independent 'duty to fully and fairly develop the record and to assure that the claimant's interests are considered.'" *Tonapetyan v. Halter*, 242 F.3d 1144, 1151 (9th Cir. 2001) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996)). An ALJ's duty to develop the record is triggered either by ambiguous evidence or by the "ALJ's own finding that the record is inadequate to allow for proper evaluation of the evidence." *Tonapetyan*, 242 F.3d at 1150 (citing *Smolen*, 80 F.3d at 1288).

Recognizing this need to develop the record regarding Plaintiff's pulmonary function, the ALJ ordered the consultative examination by Dr. Whitehouse. Despite Plaintiff's disagreement

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[1] In January 2001, Plaintiff's pulmonary function tests reflected a Forced Vital Capacity (FVC) of 90 and a Forced Expiratory Volume in 1 second (FEV1) of 68 with an insignificant response to bronchodialator. (AR 440). Dr. Whitehouse's testing reflected a FVC of 87 and FEV1 of 77. (AR 755).

with Dr. Whitehouse's means of testing and conclusions, Dr. Whitehouse's examination and resulting report was not ambiguous, incomplete, inconsistent, or inconclusive, and provided substantial support for the ALJ's findings. While the ALJ does have a duty to develop the record, the regulations require only that the medical evidence be complete enough to make a determination regarding the nature and effect of the claimed disability, the duration of the disability, and the claimant's residual functional capacity. 20 C.F.R. § 416.913(e). It is difficult to decide what quantum of evidence is adequate, however, in this case, the evidence provided was sufficient for the ALJ to make such a determination. Moreover, as discussed above, Plaintiff shoulders the burden of producing evidence of disability, not the ALJ.

B. Credibility

To accept Plaintiff's claims of disabling orthopedic problems and shortness of breath, the ALJ would have to find Plaintiff credible. See 20 C.F.R. §§ 404.1529, 416.929 (permitting the evaluation of, among other things, inconsistencies in the evidence, and conflicts between a claimant's statements and the rest of the evidence, to determine the extent to which symptoms affect capacity to work). Here, the ALJ found that Plaintiff's statements regarding his pain, his symptoms, and his limitations were not persuasive, to the extent he claimed he could not work. (AR 32-33). The ALJ's credibility findings were properly supported, and are entitled to deference.

Whenever an ALJ's disbelief of a claimant's testimony is a critical factor in a decision to deny benefits, the ALJ must make explicit credibility findings. *Rashad v. Sullivan*, 903 F.2d 1229,

1231 (9th Cir. 1990); *see Albalos v. Sullivan*, 907 F.2d 871, 874 (9th Cir. 1990) (implicit finding that claimant was not credible is insufficient); *see also Lester*, 81 F.3d at 834 (the ALJ must provide clear and convincing reasons for discrediting a Plaintiff's testimony as to severity of symptoms when there is medical evidence of an underlying impairment). Indicia of unreliability upon which an ALJ may rely to reject Plaintiff's subjective complaints include: (a) activities inconsistent with a finding of a severe impairment; (b) discrepancies in Plaintiff's statements; (c) exaggerated complaints; and (d) an unexplained failure to seek treatment. *See Fair v. Bowen*, 885 F.2d 597, 603-04 (9th Cir. 1989) ("if, despite his claims of pain, a claimant is able to perform household chores and other activities that involve many of the same physical tasks as a particular type of job, it would not be farfetched for an ALJ to conclude that the claimant's pain does not prevent the claimant from working."). If properly supported, the ALJ's credibility determinations are entitled to "great deference." *Green v. Heckler*, 803 F.2d 528, 532 (9th Cir. 1986).

The ALJ spent an entire page of her decision explaining her decision to discredit Plaintiff’s testimony that he is unable to work. The ALJ noted, for example, that Plaintiff stated he could only sit for up to one hour and is limited in his ability to walk and stand, yet he is able to lift and carry 10 pounds, cooks, cleans and drives. (AR 32). Plaintiff testified he watches probably ten hours of TV (AR 841), visits with friends for an hour (AR 841), plays cards, goes grocery shopping and fishes. (AR 842). He has his own boat which he gets on and off the trailer by himself. (AR 845). Plaintiff testified he chopped wood, pulled

weeds and was up and down a ladder painting his house. (AR 851). Though it still bothered him, Plaintiff he still mowed his lawn. (AR 851). The ALJ mentioned there were multiple inconsistencies in the record regarding the Plaintiff's own statements (AR 32). The ALJ further noted that Plaintiff gave inconsistent statements to doctors and exhibited poor effort on testing (AR 32). The ALJ further observed that Plaintiff's stated limitations were inconsistent with the findings of medical examinations demonstrating he had "normal range of motion, normal neurological examinations related to his alleged musculoskeletal impairments." (AR 32). Though the ALJ's suggestion that Plaintiff did not seek treatment from November 1998 and April 1999 was incorrect, the ALJ's remaining credibility findings are properly supported, based upon permissible grounds, and are sufficiently specific to permit the Court to conclude the ALJ did not arbitrarily discredit the Plaintiff's testimony. *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). Accordingly, the ALJ's credibility finding is entitled to deference.

C. Residual Functional Capacity

1. Department of Labor and Industries Finding

Plaintiff contends the ALJ erred by failing to discuss the disability finding of the State of Washington regarding Plaintiff's workers compensation claim. However, a determination of disability by a state agency is not binding on the Commissioner, even when the state standards are more rigorous than those used to determine disability under the Social Security Act. *Bates v. Sullivan*, 894 F.2d 1059, 1063 (9th Cir. 1990). The ALJ's failure to discuss the finding was not reversible error because the ALJ is not required to discuss every piece of evidence, rather

the ALJ is only required to explain why significant, probative evidence is rejected. *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984).

2. William Davis and David Ellis

Plaintiff argues the ALJ should have accorded more weight to the opinions of Plaintiff's chiropractors, David Ellis, D.C. and William Davis, D.C., who Plaintiff claims opined Plaintiff could only perform less than a full range of sedentary employment.

Chiropractors are not considered acceptable medical sources under 20 C.F.R. § 404.1513(a). Information from chiropractors is listed as another source which may also help the agency understand how a claimant's impairment affects his or her ability to work. Id. at § 404.1513(e). Although a chiropractor's opinion does not have the status of that of a physician, chiropractic evidence regarding how an impairment affects the claimant's ability to work is considered by the Commissioner under the same regulatory provision as lay testimony and, thus, cannot be disregarded without giving reasons germane to each witness for doing so. *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (citing *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993)). One reason for which an ALJ may discount lay testimony is that it conflicts with medical evidence. *Vincent v. Heckler,* 739 F.2d 1393, 1395 (9th Cir. 1984). The ALJ's decision in this case met these standards.

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The treatment records of Dr. Ellis and Dr. Davis were not disregarded by the ALJ and were discussed by the ALJ.[2] In fact, in concluding the Plaintiff had the capacity for a narrow range of light work, the ALJ noted that the majority of examiners of record, including the Plaintiff's (most recent) chiropractor, had opined that the claimant could return to work with some restrictions. Although the restrictions assessed by Dr. Ellis (and earlier by Dr. Davis) were slightly more restrictive than those ultimately accepted by the ALJ, the ALJ's opinion was adequately supported by substantial evidence which the ALJ viewed as more persuasive evidence of the Plaintiff's work limitations.

The Court may reverse the ALJ's decision to deny benefits only if it is based upon legal error or is not supported by substantial evidence. *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999). If the evidence can reasonably support either confirming or reversing the Commissioner's decision, the Court may not substitute our judgment for that of the ALJ. *Id*. Thus, while it may have reasonable for the ALJ to accept the chiropractors more limited assessments, in a case where the evidence is susceptible to more than one rational interpretation of the evidence, the Court must uphold the ALJ's decision. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989); *Gallant v. Heckler*, 753 F.2d 1450, 1453 (9th Cir. 1984).

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[2] Plaintiff claims the ALJ "mischaracterized and/or dismissed" the chiropractor's opinions but does not provide any citation to the record or other explanation for this assertion. Ct. Rec. 7 at 6. It is not the duty of the court to develop Plaintiff's arguments for him, find the legal authority to support those arguments, or guess at what part of the Record may be relevant. *See In re Morrissey*, 349 F.3d 1187, 1189 (9th Cir. 2003).

3. Light Work v. Sedentary Work

Last, Plaintiff asserts that the ALJ should have concluded that he had an RFC for sedentary work, not light work, which would make him disabled under the grids. Because the ALJ found Plaintiff to have the capacity for a "narrow range" of light work[3], as opposed to "all or substantially all" of the requirements of light work, Plaintifff erroneously contends that SSR 83-10 and 83-11 directs the ALJ to apply the sedentary guidelines. The ALJ properly concluded, based on substantial evidence, that Plaintiff had an RFC for light work, except that he is unable to stand or walk for prolonged periods of time, could not work at unprotected heights, could not kneel, squat or crawl more than ocassionally, and could not push or pull with his left leg more than 20 pounds. When the plaintiff's circumstances do not match all the corresponding criteria in a rule, the grid does not direct a conclusion, see SSR 83-10, but instead is to be used as guidance for deciding whether a plaintiff is disabled. *Santiago v.*

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[3] Under the regulations promulgated by the Social Security Administration (SSA),

> Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

20 C.F.R. § 416.967(b).

Barnhart, 367 F.Supp.2d 728, 735 (E.D.Pa. 2005) (citing SSR 83-12, 1983 WL 31253). Furthermore, when the extent of the erosion of the occupational base is not clear, the adjudicator is encouraged to consult a vocational expert. SSR 83-12 at *2; *see also Boone v. Barnhart,* 353 F.3d 203, 210 (3d Cir. 2004) (explaining that a "VE can provide a more individualized analysis as to what jobs the claimant can and cannot perform than does [an ALJ's] determination of the claimant's remaining occupational base." (citing SSR 83-12)). The ALJ found Plaintiff was not capable of performing all, or substantially all, of the requirements of light work. A Vocational Expert was consulted and asked whether there were a sufficient number of jobs that Plaintiff could perform given his RFC. The ALJ found that Plaintiff could not do all light work, but that Plaintiff could perform significant work that is unskilled and light based on testimony by the Vocational Expert. (AR 856-858). The VE testified that a significant number of jobs in the regional economy exist for persons with Plaintiff's residual functional limitations. (AR 34-36). The ALJ credited the VE's testimony, which served as substantial evidence for his decision that Plaintiff is capable of making a successful adjustment to light work and that exists in significant numbers in the national economy. (AR 35).

Upon careful and independent consideration, the record reveals that the Commissioner applied the correct legal standards and that the record as a whole contains substantial evidence to support the ALJ's findings of fact and conclusions of law.

CONCLUSION

Having reviewed the record and the ALJ's conclusions, this Court finds that the ALJ's decision is supported by substantial

evidence and free of legal error. Based on the foregoing, the undersigned finds that the ALJ properly determined that Plaintiff is not disabled within the meaning of the Social Security Act. Accordingly,

IT IS ORDERED:

1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 7**) is **DENIED**.

2. Defendant's Motion for Summary Judgment (**Ct. Rec. 8**) is **GRANTED**.

3. The District Court Executive is directed to enter judgment in favor of Defendant, file this Order, provide a copy to counsel for Plaintiff and Defendant, and **CLOSE** this file.

DATED this 11th day of September, 2006.

s/ Alan A. McDonald
ALAN A. McDONALD
SENIOR UNITED STATES DISTRICT JUDGE